

SERVICE DATE
Oct 25, 2013

PSC REF#:192349

Public Service Commission of Wisconsin
RECEIVED: 10/25/13, 12:48:01 PM

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Oak Creek Water and Sewer Utility, Milwaukee County,
Wisconsin, for Authority to Increase Water Rates

4310-WR-104

SECOND AMENDED FINAL DECISION

This is the Second Amended Final Decision in the Class 1 proceeding conducted by the Commission on the application of Oak Creek Water and Sewer Utility (Oak Creek) for approval to increase water rates. This Second Amended Final Decision amends and supersedes the section captioned Allocation of Public Fire Protection (PFP) Costs to Franklin, *Final Decision*, July 23, 2012, at p. 17. ([PSC REF#: 168775.](#))

Introduction

On May 10, 2011, Oak Creek filed an application with the Commission requesting authority to increase water rates. On April 26, 2012, the Commission held a hearing in Madison and in Oak Creek, Wisconsin, for technical issues and for public comment. On July 23, 2012, the Commission approved Oak Creek's application to increase water rates as set forth in its Final Decision.

On August 13, 2012, Oak Creek filed a Petition for Reconsideration or Rehearing under [Wis. Stat. § 227.49\(1\)](#) because the Final Decision did not allocate public fire protection costs (PFP) to the City of Franklin (Franklin). On September 25, 2012, the Commission reopened this docket under [Wis. Stat. § 196.39](#) to reconsider the Final Decision. ([PSC REF#: 172957.](#)) At its open meeting of October 3, 2012, the Commission affirmed its original decision

to not allocate public fire protection costs to Franklin.¹ On October 10, 2012, Oak Creek sought judicial review in Milwaukee County Circuit Court on the narrow issue of the Commission's treatment of PFP costs.

On judicial review, Oak Creek argued that the Commission's treatment of PFP charges was: (1) a change from prior agency practice made without a rational basis; (2) based upon an incorrect interpretation of the Agreement between Oak Creek and Franklin;² (3) not based upon substantial evidence in the record; and (4) an abuse of discretion. On July 19, 2013, the Court affirmed the Commission's decision to not allocate PFP costs to Franklin. *City of Oak Creek v. Public Serv. Comm'n*, No. 12-CV-11459 (Wis. Cir. Ct. Milwaukee County, July 19, 2013).

However, the Court partially remanded the case to allow the Commission to conduct such further proceedings as are necessary to revise and/or supplement the written decision to fully explain its inclusion of Franklin in the utility's total PFP costs and subsequent allocation of Franklin's share solely to Oak Creek's retail customers.

Findings of Fact

1. It is reasonable to allocate public fire protection (PFP) costs based on the method used in the 2011 Milwaukee Water Works rate case (docket 3720-WR-107).
2. A reasonable estimate of the demand of water for PFP, based on the population served, is 3,660 gallons per minute (gpm) for 3.6 hours for Oak Creek, 1,834 gpm for 1.8 hours for Caledonia, and 3,404 gpm for 3.4 hours for Franklin.

¹ By Order dated October 4, 2012, the Commission modified two aspects of its Final Decision of July 23, 2012, subject to further opportunity for hearing. ([PSC REF#: 173880.](#)) Because the allocation of PFP was not among the contemplated modifications, the result was affirmation of the allocation of PFP as contained in the Final Decision.

² Agreement for Oak Creek to Provide Water at Wholesale to Franklin. ([PSC REF#: 162518.](#))

3. It is reasonable to adopt Franklin's proposed adjustment to the weighted average allocation factors to recognize fire flow provided by wholesale customer storage.

4. It is reasonable to not allocate PFP costs to Franklin.

Conclusions of Law

1. The applicant is a municipal public utility as defined in [Wis. Stat. § 196.01\(5\)\(a\)](#).
2. The Commission has authority under Wis. Stat. §§ [196.03\(1\)](#) and [\(3\)](#), [196.19](#), [196.20](#), [196.22](#), [196.37\(1\)](#), [\(2\)](#), and [\(3\)](#), [196.39](#), and [196.395](#) to authorize the applicant to increase water utility rates and revise tariff provisions.

Opinion

Cost of Service Study (COSS)

Allocation of Public Fire Protection (PFP) Costs to Franklin

Oak Creek, in its coincident demand method COSS,³ allocated PFP costs to both Franklin and Caledonia. Oak Creek stated that the system has sufficient capacity to provide fire protection to Franklin. Oak Creek has three booster stations which combined can produce over 19 million gallons per day of water for an indefinite period of time. Oak Creek argued that these extra capabilities, along with the transmission main network, would be available to Franklin during a large fire event, and, therefore, Franklin should be allocated PFP costs.

Franklin proposed that it should not be allocated PFP costs. Franklin submitted its own COSS⁴ allocating PFP costs in the same manner as Oak Creek's COSS.⁵ In order to recognize

³ [Ex.-Oak Creek-Mayer-3 - PSC REF#: 162522](#), Schedule 22.

⁴ [Ex.-Stannard-2 - PSC REF#: 162538](#), Schedule 11.

fire flow provided by storage, Franklin proposed a 100 percent credit for such storage. Due to contractual and operational relationships, Franklin stated that it receives no PFP benefit from the Oak Creek system. Franklin and Caledonia (Wholesale Intervenors) noted that the wholesale contract does not require that Oak Creek meet Franklin's fire flow requirements during periods of maximum day demand. Further, the flow control devices that Franklin installed cannot exceed the maximum day flow limit in the wholesale contract. As a result, Franklin has constructed its own storage facilities to ensure that it can meet its fire flow needs under maximum day conditions.

Both Oak Creek and the Wholesale Intervenors allocated the Oak Creek system's total public fire protection costs to the retail and wholesale communities on the basis of estimated fire flows using the "Milwaukee Method," so named for the allocation method used in the last Milwaukee Water Works rate case (docket 3720-WR-107). In this method, fire flows are estimated based on the average of the maximum and minimum Freeman's method,⁶ the National Board of Fire Underwriters' method,⁷ and the Kuickling method.⁸ All of these methods are based on the population served by the utility. This resulted in estimated fire flows of 3,660 gpm for 3.7 hours ($3,660 \times 3.7 = 13,543$) for Oak Creek; 1,834 gpm for 1.8 hours ($1,834 \times 1.8 = 3,302$) for Caledonia; and 3,404 gpm for 3.4 hours ($3,404 \times 3.4 = 11,575$) for Franklin.

Direct public fire protection costs are allocated among retail communities, in this case only Oak Creek, in proportion to their estimated maximum fire flows. The direct public fire

⁵ [Ex.-Oak Creek-Mayer-3 - PSC REF#: 162522](#), Schedule 26B.

⁶ Stated as $Q=1136[P/5+10]$ where P=population in thousands; Q=water quantity required in liters per minute (L/m).

⁷ Stated as $Q=4637\sqrt{P[1-0.01\sqrt{P}]}$.

⁸ Stated as $Q=3182\sqrt{P}$.

protection cost function consists mainly of expenses relating to fire hydrants, but also includes a portion of general accounts allocated on a weighted average. Wholesale customer classes, Caledonia and Franklin, are not allocated direct fire protection costs because they presumably do not receive water for public fire protection through hydrants owned by Oak Creek. Indirect fire protection costs, *i.e.*, base and extra capacity costs associated with the provision of water for public fire protection, are allocated to all retail and wholesale classes in proportion to their estimated fire flows.

Like any service provided by the Oak Creek water utility, only those customers who receive and benefit from the service are subject to the charge for the service. Franklin and Caledonia receive and benefit from wholesale general service and are charged for that service. Caledonia receives and benefits from the fire-fighting capacity of the Oak Creek system, and it is subject to a PFP charge. Franklin demonstrated that it neither receives nor benefits from the fire-fighting capacity of the Oak Creek system. Therefore, in its cost of service study and rate design proposal, the Wholesale Intervenors applied a credit to Franklin, equal to the amount of the PFP costs allocated to Franklin by Oak Creek, to recognize Franklin's investment in storage facilities and other infrastructure to be able to provide its own fire protection.

The Commission finds it reasonable to allocate no PFP costs to Franklin. However, the Commission's decision does not change the PFP allocation to Caledonia. Caledonia receives fire protection benefits from Oak Creek's facilities and is allocated its appropriate share of the costs of those facilities. The Commission's decision does not increase benefits to Caledonia due to Franklin not being allocated PFP costs. Also, the Oak Creek system's total PFP costs do not decrease as a result of Franklin not being allocated PFP costs because such costs make up a

specific portion, \$1,120,731, of Oak Creek's revenue requirement, independent of the wholesale customers. Ultimately, the Commission has discretion to allocate costs among users. With no PFP costs to Franklin and no change in the PFP allocation to Caledonia, Oak Creek recovers less of its PFP system costs from wholesale. Thus, it is reasonable to require Oak Creek to collect the remainder of its PFP system costs from retail.

Order

1. This Final Decision takes effect one day after the date of service.
2. The authorized rates and tariff provisions are unchanged from those authorized in the Final Decision dated July 23, 2012, as affirmed and amended by the Amended Final Decision dated May 23, 2013.
3. The Commission retains jurisdiction.

Dated at Madison, Wisconsin, this 25th day of October, 2013.

By the Commission:



Sandra J. Paske
Secretary to the Commission

SJP: DL:00818562 4310-WR-104 Second Amended Final Decision

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.⁹ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

⁹ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.